IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. E/2246 & 2597/2009-E[SM]
[Arising out of Order-In-Appeal No. 73/2009/CE/DLH/2009 dated 05.06.2009 passed by CCE (Appeals) Delhi-II]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

C.C.E. Delhi – I ...Appellants
M/s Luthra Industries

Vs.

M/s Luthra Industries …Respondents
C.C.E. Delhi – I

Appearance:
Mr. Ravinder Singh (Consultant) for the Appellant
Mr. R K Mishra, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 04.08.2015

Final Order No. 54304-54305 /2015

Per S K Mohanty:

Being aggrieved with the impugned order dated 5.6.2009, both the assessee as well as Revenue have preferred these appeals before this Tribunal.

2. The assessee has filed the appeal on the ground of denial of cenvat credit. The grievance of Revenue is that Commissioner (Appeals) is not justified in reducing the quantum of penalty to 25% in terms of Section 11AC of the Central Excise Act, 1944.

3. Heard Sh. Ravinder Singh, the Ld. Consultant for the assessee and Sh. R K Mishra, the Ld. AR of the Revenue.

4. So far as the assessee's appeal is concerned, I find from the impugned order that the Commissioner (Appeals) vide paragraph 1 has held that the appellant has admitted his mistake and not contested the demand of short payment of duty which has already been deposited by it during investigation. Since, the assessee has admitted its liability before the lower authority, I do not find it proper to entertain the grounds urged at this stage. Therefore, the appeal filed by the assessee is not maintainable and accordingly, the same is dismissed.

5. The Revenue has challenged this impugned order on the ground that reduction in the penalty amount of 25% is not in conformity with Section 11AC of the Central Excise Act, 1944. The Ld. AR appearing for the Revenue submits that as per the requirement of Section 11AC of the Act, both the duties along with interest has to be paid within 30 days from the date of communication of the adjudication order. He submits that in the present case, though the duty was deposited by the Respondent M/s Luthra Industries before issuance of SCN, but the interest attributable to such late payment of the duty was paid after 1.5 year from the date of communication of the adjudication order. He submits that since the interest has not been paid within 30 days from the date of communication of the Adjudication Order, the benefit of reduced penalty as provided in the proviso of Section 11AC of the Act will have no application, and as such, the impugned order passed by the Commissioner (Appeals) is liable to set aside.

6. I find force in the submission of the Ld. AR that the First Proviso to Section 11AC regarding reduction of the penalty amount shall not be applicable in the facts of the present case inasmuch as the interest

amount has not been deposited within 30 days from the date of communication of the Adjudication Order. Therefore, I am of the considered view that the impugned order passed by the Commissioner (Appeals) is not legal and proper, and as such, the same is set aside and the appeal filed by the Revenue is allowed.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

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